

Appl. No. 09/342,719
Docket No. 7590Q
Amdt. dated January 15, 2009
Reply to Office Action mailed on October 16, 2008
Customer No. 27752

REMARKS

Claim Status

Claims 28–32, 34-37, 40-44, 47-48, 58-60, and 64-66 are pending in the present application. No additional claims fee is believed to be due.

Claims 28 and 58 are amended herein to recite that the diaper comprises a topsheet connected with a backsheet, and an absorbent core disposed between the backsheet and topsheet. In addition, claims 28 and 58 are amended to recite that the responsive system is disposed within the diaper so as to be disposed between the backsheet and the wearer. Claim 58 is also amended herein to correct various grammatical errors. Further, claim 66 is amended in light of amendments to claim 28.

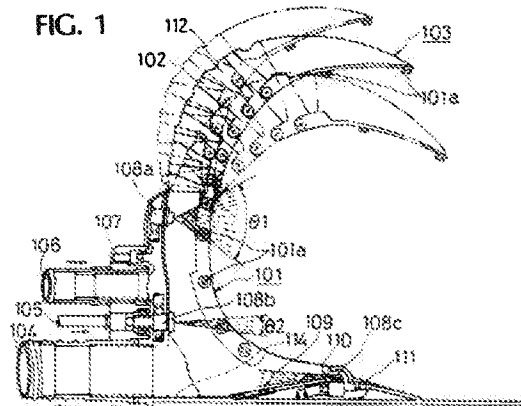
Support for these amendments can be found at least at pages 6-13, pages 40-41, and Figure 8 of the specification. It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 U.S.C. § 103(a) Over Hashimoto

Claims 28-32, 58, and 64-66 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,681,297 issued to Hashimoto et al. (hereinafter “Hashimoto”). Hashimoto does not teach or suggest all of the claim limitations of Claims 28 and 58 and, therefore, does not establish a *prima facie* case of obviousness (see MPEP 2143.03).

In support of the rejection of claims 28 and 58, the Office Action asserts that Hashimoto discloses the claimed responsive system by characterizing the sensor 109 and the nozzle 108b of Hashimoto as the claimed sensor and actuator. (See Office Action, Page 3). As discussed above, claims 28 and 58 are amended herein to recite that the responsive system is disposed within the diaper so as to be located between the backsheet and the wearer. (emphasis added). In contrast to claims 28 and 58, the nozzle 108b and sensor 109 Hashimoto are not located within a diaper.

In particular, Hashimoto discloses a device for disposing excrement, referred to therein as a "diaper cup," which is connected to external facilities (e.g. vacuum motor housing, water tank, pump, valves) through a plurality of hoses (See Col. 2, ll. 1-12; Col. 4, ll. 17-42; and Fig. 2). The diaper cup is also equipped with a nozzle 108a for washing the pubic region, a nozzle 108b for washing the anus, a bowel movement perceiving sensor 109, and snapping hooks that permit exchangeable diapers to be put on and taken off the diaper cup. (emphasis added). (See Col. 3, ll. 42-53). For additional clarity, Figure 1 of Hashimoto is reproduced below.



As disclosed in Hashimoto, the nozzle 108b and sensor 109 of Hashimoto are part of a device (i.e. a diaper cup) that is adapted to connect externally to a diaper. As such, Hashimoto does not teach or suggest the responsive system of claims 28 and 58.

In the Amendment of June 26, 2008, it was argued that in contrast to Hashimoto, claims 28 and 58 recite that the compositions are stored within the disposable article prior to the diaper being first used and prior to a first excretion of fecal waste by the wearer. (emphasis added). In response, the Office Action asserts that the recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art. (See Office Action, Page 2). It is respectfully submitted that the Hashimoto does not teach or suggest the diaper structure recited in claims 28 and 58 wherein compositions are stored within the diaper prior to the diaper being first used and prior to a first excretion of fecal waste by the wearer. Instead, Hashimoto discloses a diaper cup adapted to connect with a diaper, wherein the diaper

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cup is connected to external facilities (i.e. tanks and pumps), which deliver externally stored washing water and air to the diaper cup in order to wash excrement from the body of a wearer and to remove the waste from the diaper cup through a drain. In contrast to the language of independent claims 28 and 58, Hashimoto does not teach or suggest the claimed diaper structure that stores one or more compositions for enhancing the removability of fecal waste from skin of the wearer.

In the Office Action of March 27, 2008, it was asserted that the “article of Hashimoto is intended to be worn during subsequent excretions of fecal matter by the wearer” and that “the compositions provided to, and briefly stored in, the diaper in response to one excretion of fecal waste are present in the diaper prior to the next excretion of fecal waste by the wearer.” (See Office Action of March 27, 2008, Page 2). As such, the Office Action’s characterization of Hashimoto relies on the assertion that “compositions” are provided to and briefly stored in the diaper cup after the diaper cup has been used and after at least one excretion of fecal waste by the wearer into the diaper cup. The Office Action now asserts that composition disclosed by Hashimoto is fully capable of being stored within the diaper itself prior to a first excretion of waste for delivery after the excretion of waste. (See Office Action, Page 2). “[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741 (2007). “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Here, in support of the claim rejections, the Office Action has merely made conclusory statements that it would have been obvious to modify the structure of Hashimoto, without articulating why it would have been obvious to modify Hashimoto to arrange various elements in the manner claimed.

Thus, it is respectfully submitted that, for at least the reasons discussed above, claims 28 and 58 are patentable under 35 U.S.C. § 103(a) over Hashimoto. Claims 29-32 and 64-66 depend from and include all the limitations of claim 28. As such, for at least

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the same reasons discussed above with reference to claim 28, claims 29-32 are also patentable under 35 U.S.C. § 103(a) over Hashimoto.

It is also respectfully submitted that dependent claims 64-66 recite additional limitations that are not taught or suggested by Hashimoto, and the Office Action fails to point out where Hashimoto teaches or suggests these claim limitations. In particular, claim 64 recites “wherein the one or more compositions is joined to the diaper while the one or more compositions is being stored.” (emphasis added). Further, claim 66 recites “the one or more compositions is attached to the topsheet while the one or more compositions is being stored.” Claim 65 recites “the diaper further comprises a leg cuff, and the one or more compositions is attached to the leg cuff while the one or more compositions is being stored.” (emphasis added). With regard to claim 65, the Office Action asserts that Hashimoto discloses a composition that is “in contact with” leg cuffs.” (See Office Action, Page 3). In making this assertion, the Office Action is equating the meanings of the words “attached to” with “in contact with” without providing a basis or explanation for doing so. Based on the discussion of Hashimoto above, it is clear that Hashimoto does not teach or suggest the claim limitations recited in claims 64-66.

Therefore, it is believed that claims 28-32, 58, and 64-66 are in form for allowance and such indication is respectfully requested.

Rejection Under 35 U.S.C. § 103(a) Over Hashimoto in view of Jones

Claims 34-37, 40-44, 47, 48, 59, and 60 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Hashimoto in view of U.S. Patent No. 5,482,714 issued to Jones et al. (hereinafter “Jones”).

It is respectfully submitted that Jones does not correct the deficiencies of Hashimoto discussed above. As such, independent claims 28 and 58 are patentable under 35 U.S.C. § 103(a) over Hashimoto in view of Jones. Claims 34-37, 40-44, 47, and 48 depend from and include all the limitations of claim 28, and claims 59 and 60 depend from and include all the limitations of claim 58. Thus, for at least the same reasons discussed above with reference to claims 28 and 58, claims 34-37, 40-44, 47, 48, 59, and 60 are also patentable under 35 U.S.C. § 103(a) over Hashimoto in view of Jones.

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Therefore, it is believed that claims 34-37, 40-44, 47, 48, 59, and 60 are in form for allowance and such indication is respectfully requested.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 U.S.C. § 103(a). Early and favorable action in the case is respectfully requested.

Respectfully submitted,

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